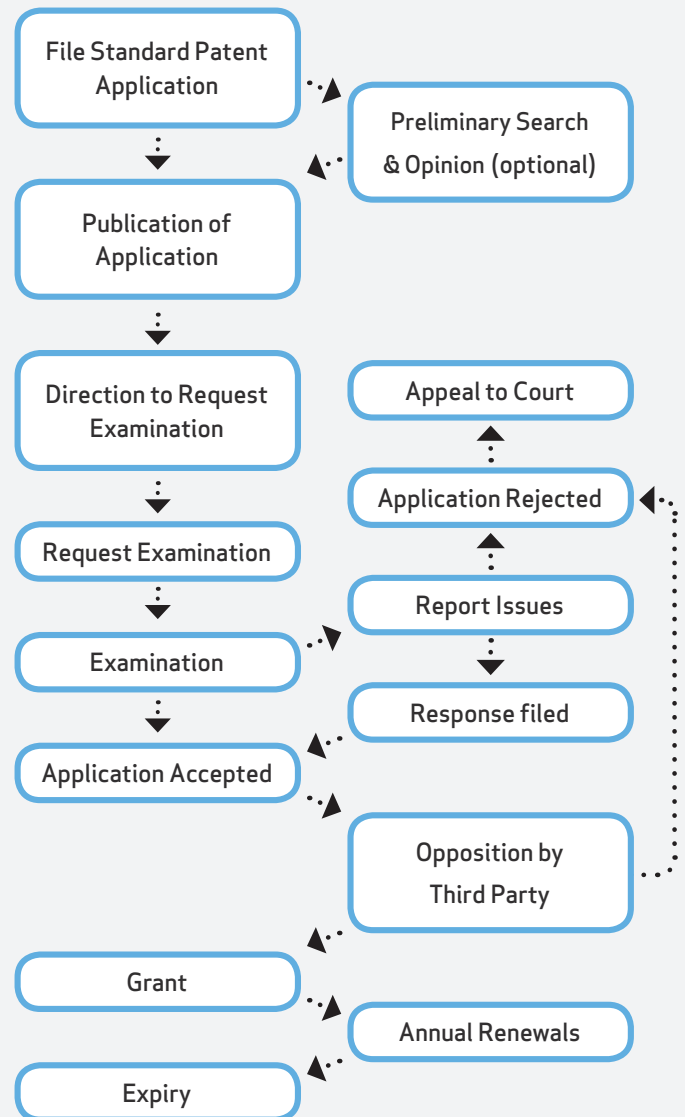


# AUSTRALIA: PATENTS

There are two types of patents in Australia – standard patents and innovation patents. A brief summary of each type is provided below.

## STANDARD PATENTS

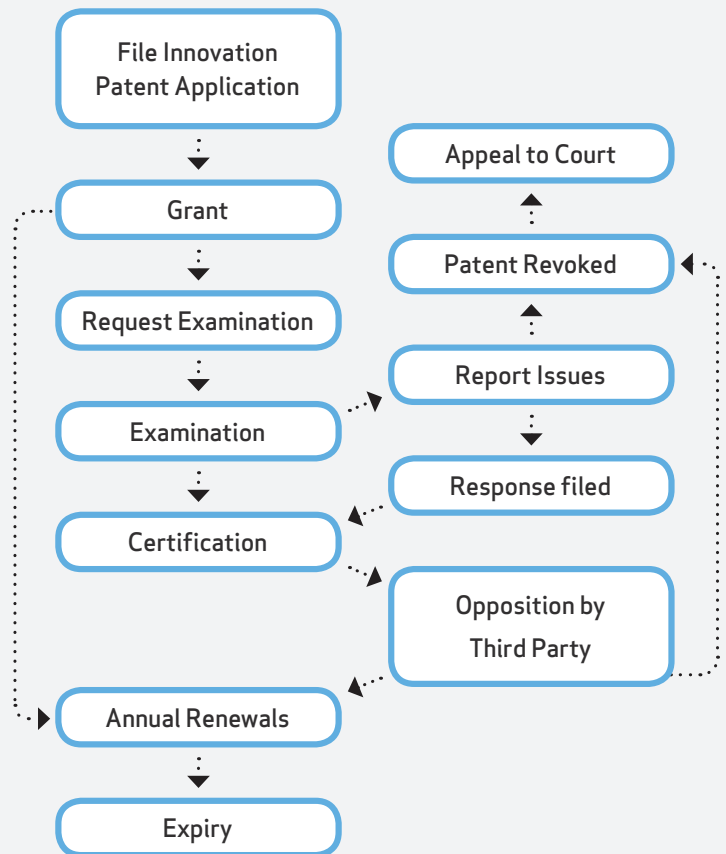
- Term: 20 years (note, the term of a pharmaceutical patent may be extended by up to five years provided specific requirements are met).
- Absolute (universal) novelty required.
- Inventive step required.
- Examination must be requested within two months of a direction to request examination being received or within five years after filing, whichever is the earlier.
- Combined search and substantive examination before grant.
- Opposition to grant by third parties.
- Post-grant re-examination.
- Annual renewals commencing from the fourth anniversary.
- Marking optional.
- Infringement and revocation proceedings may be commenced in a court of law only.



Standard Patent Application Process

## INNOVATION PATENTS

- Term: eight years.
- Absolute (universal) novelty required.
- Innovative step required (a significantly lower threshold requirement than an inventive step).
- Formality examination only prior to grant.
- Substantive examination (i.e., certification) is optional but required for enforcement.
- Opposition by third parties at any time after certification.
- Annual renewals commencing from the second anniversary.
- Marking optional.
- Infringement and revocation proceedings may be commenced in a court of law only.



Innovation Patent Application Process

# Filing Requirements

## Commencing the national phase of an international application

### Information and documents required:

- PCT application number or publication number (i.e., WO number).
- A verified English translation of the PCT specification (if the PCT specification was published in a language other than English<sup>1</sup>).
- Whether a standard or innovation patent is required<sup>2</sup>.
- If the applicant is not the inventor, confirmation that the applicant has obtained entitlement to the invention from the inventor(s)<sup>3</sup>.
- If the PCT application claims priority from an earlier application:
  - Confirmation that the PCT applicant was the applicant of the earlier application, or if not,
  - Confirmation that the PCT applicant has entitlement to claim priority from the earlier application, and
  - Confirmation that the earlier application was the first application filed in a Convention country for the invention.

### Additional Requirements (may be provided later):

- An editable electronic copy of the original PCT specification.
- Copies of any Article 19 or 34 amendments for our file.
- For reliance on deposits made under the provisions of the Budapest Treaty:
  - A copy of the filing receipts (and verified English translations thereof if not in English), and
  - An explanation as to how the applicant obtained entitlement to rely on the deposits if the applicant is not the depositor.

**No power of attorney is required.**

**No documents are required to be signed by the applicant or inventor.**

### NOTES:

<sup>1</sup> The translation is to be accompanied by a statement by a person who can attest to the accuracy of the translation. We can supply a suitable verification form if you wish. If Article 34 amendments have been filed and the IPRP (Chapter II) is established before national phase entry, the applicant may file a verified English translation of the original PCT specification plus the pages amended under Article 34 or the PCT specification incorporating the Article 34 amendments. If the drawings contain non-English words, a translation of the drawings should also be provided.

<sup>2</sup> In the absence of instructions to the contrary, we will apply for a standard patent.

<sup>3</sup> It is not necessary to provide proof of entitlement, such as, e.g., an assignment document, nor is it necessary to specify the exact manner in which the applicant has obtained entitlement. However, you should ensure that the applicant has obtained entitlement in fact, since a lack of entitlement is a ground of revocation.

## Filing an application for a standard or innovation patent

### Information and documents required:

- Name and address of each applicant.
- Name of each inventor.
- Copy of the specification, claims, abstract and drawings (in English)<sup>1</sup>.
- Whether a standard patent or innovation patent is required<sup>2</sup>.
- Particulars of each basic application (for Convention applications)<sup>3</sup>.
- If the applicant is not the inventor, confirmation that the applicant has obtained entitlement to the invention from the inventor(s).
- If the application claims priority from a basic application:
  - Confirmation that the applicant was the applicant of the basic application, or if not,
  - Confirmation that the applicant has entitlement to claim priority from the basic application, and
  - Confirmation that the basic application was the first application filed in a Convention country for the invention.

### Additional Requirements (may be provided later):

- For reliance on deposits made under the provisions of the Budapest Treaty:
  - A copy of the filing receipts (and verified English translations thereof if not in English), and
  - An explanation as to how the applicant obtained entitlement to rely on the deposits if the applicant is not the depositor.

**No power of attorney is required.**

**No documents are required to be signed by the applicant or inventor.**

### NOTES:

<sup>1</sup> Preferably supplied in an editable electronic form, e.g., a WORD copy of the specification.

<sup>2</sup> In the absence of instructions to the contrary, we will apply for a standard patent.

<sup>3</sup> A certified copy of the basic application (and an English translation of a non-English language basic application) are NOT required, unless expressly requested by the Patent Office.